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137

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,498	04/04/2001	Loralei Marie Brandt	J6497(C)	3031
7590 08/11/2005				
Karen E Klumas Unilever Intellectual Property Group 45 River Road Edgewater, NJ 07020		EXAMINER YU, GINA C		
		ART UNIT 1617		PAPER NUMBER

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/826,498

**Applicant(s)**

BRANDT ET AL.

**Examiner**

Gina C. Yu

**Art Unit**

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-25 and 27-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27, 28, 30 and 32 is/are allowed.
- 6) ☒ Claim(s) 19-25, 29, 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Receipt is acknowledged of amendment filed on May 15, 2005. Claims 19-25 and 27-32 are pending. Claim rejection made under 35 U.S.C. § 103 (a) over Peffly (US 5985294) in view of Samain et al. (US 6511651 B1) and Maurin et al. (US 6403542 B1) as indicated in the previous Office action dated February 24, 2005, is withdrawn in view of applicants' remarks.

#### ***Allowable Subject Matter***

Claims 27, 28, 30, and 32 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: Claim 27 is allowed because none of the cited prior arts teach non-ionic dextran. Claims 28, 30, and 32 depend on claim 27.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 19-25, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peffly (US 5985294) in view of Samain et al. (US 6511651 B1) ("Samain") and Maurin et al. (US 6403542 B1) ("Maurin").**

Claim 19 requires 0.04-1.5 % of (a) a polymer comprising vinyl caprolactam, methacrylamidopropyl dimethylamine, vinylpyrrolidone monomers; and (b) hydroxyethyl cellulose in alcoholic carrier chosen from methanol, ethanol, N-propanol, isopropanol, or the mixture thereof; wherein the ratio of the polymer and hydroxyethyl cellulose is 1:2.2 to 1:0.2.

Peffly teaches hair styling gel composition comprising 3 % by weight of PVP/VA copolymer (50 % active) and 1 % by weight of hydroxyethyl cellulose, the ratio of the holding copolymer to hydroxyethyl cellulose is 1: 0.66, which meets the weight ratio limitation of two hair holding polymer of instant claims, claims 19 (c) and 20-22. See Example III. The reference also teaches that the total amount of hair styling polymer is preferably from about 0.5-10 % by weight, and teaches using ionic and nonionic polymers or the mixtures thereof. See col. 3, lines 33 – 60. Hydroxyethyl cellulose is a preferred nonionic polymer. See col. 4, lines 50-59. As for claims 23-25, examiner views that optimization of the weight ratio of two hair holding polymers is within the skill of the art because the Peffly generally teaches weight amount of the holding polymers to formulate hair styling compositions. The reference teaches that the total amount of the holding polymers is preferably as little as 0.5 %; and Example III shows the weight ratio of vinylpyrrolidone copolymers to hydroxyethyl cellulose at 1:0.66.

With respect to the transitional phrase "consisting essentially of" in claim 27, for the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." If an applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention. See *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964).

While Peffly teaches vinyl caprolactam/pvp/dimethylaminoethyl methacrylate copolymer, the reference fails to teach a terpolymer having vinyl caprolactam/pvp/methacrylamidopropyl dimethylamine.

Samain teaches that vinyl caprolactam copolymers such as ACP 1189 of ISP, which is a terpolymer of polyvinylpyrrolidones, vinyl caprolactam, and dimethylaminopropyldimethylamine are well known hair fixing polymers. See col. 3, lines 42 – 60.

Maurin teaches a composition comprising vinyl caprolactam cationic copolymers also comprising vinylpyrrolidone and methacrylamidopropyldimethylamine such as ACP1189 from ISP. See abstract; col. 3, lines 48-51.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the Peffly composition by substituting the PVP hair holding polymers with the terpolymer of vinyl caprolactam as motivated by Samain and Maurin because 1) Peffly teaches hair styling copolymers comprising vinyl lactam monomers and/or PVP; 2) Samain and Maurin teach that the vinyl caprolactam/pvp/methacrylamidopropyl dimethylamine is a well known hair styling polymer; and 3) the skilled artisan would have had a reasonable expectation of successfully producing a similar hair styling composition.

### ***Response to Arguments***

Applicant's arguments filed May 15, 2005 have been fully considered but they are not persuasive in part.

Applicants argue that Peffly fails to specifically teach a terpolymer of polyvinylpyrrolidone, vinylcaprolactam and dimethylaminopropyl dimethylamine, while Maurin is directed to hair washing composition. In response, examiner respectfully reiterates that the present rejection is based on the combined teachings of the references. Samin teaches the commercial availability and the utility of the claimed terpolymer in aerosol hair styling compositions. Maurin teaches that the terpolymer is well known for providing cosmetic qualities to hair.

The claimed ratio between a holding polymer to hydroxyethyl cellulose is taught by the specific example, Example III in Peffly. While applicants assert that Example III teaches second holding polymer, PVP, in the composition, it is respectfully noted that the presently claimed composition is not limited to only one type of synthetic holding polymer.

### ***Conclusion***

Claims 27, 28, 30, and 32 are allowed.

Claims 19-25, 29, and 31 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:30 AM until 6:00 PM.

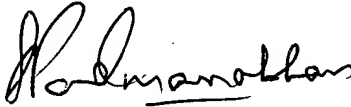
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone

Art Unit: 1617

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu  
Patent Examiner

  
SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER